

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNIVERSAL CITY STUDIOS, INC., :
Plaintiff, :
-against- :
NINTENDO CO. LTD. and :
NINTENDO OF AMERICA, INC., :
Defendants. :
-----X

Deposition of the Plaintiff

UNIVERSAL CITY STUDIOS, INC. by SID
SHEINBERG, taken by the Defendants,
pursuant to notice dated October 28,
1982 at the offices of Townley Updike,
Esqs., 405 Lexington Avenue, New York,
New York,, on Friday, November 19, 1982
at 9:30 a.m. before Donna Tursi, a
Registered Professional Reporter and
Notary Public within and for the State of
New York.



WALTER SHAPIRO, C.S.R.
CHARLES SHAPIRO, C.S.R.

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1
2 King Kong film and I believe that somewhere along the
3 road I saw one or both of the sequels to King Kong
4 and since that time I have seen the original
5 DeLaurentiis film or I shouldn't say the original --
6 the DeLaurentiis film.

7 Q Prior to the time you saw or recall seeing
8 a King Kong film for the first time, I take it from
9 your testimony here and prior testimony that you
10 were aware of King Kong?

11 A Absolutely.

12 Q Can you tell me at the time you were in
13 discussions where your awareness had come from?

14 A Well, my awareness had come from the art
15 that I associated in my mind as relating to King Kong.
16 It had also undoubtedly come from seeing excerpts
17 of King Kong, the movie and seeing stills in connection
18 with King Kong. I don't think it -- in my opinion,
19 it would not have been possible to grow up during my
20 lifetime in the United States and not be aware of
21 King Kong unless one were -- had brain damage or was
22 in a cave somewhere.

23 Q I take it your lifetime commenced about
24 1930?

25 A 1935.

Sheinberg

11

Q Excuse me. Do you recall, I realize your answer is very encompassing but do you recall any particular piece of art or --

A Absolutely. The association which I have with King Kong rightly or wrongly is a large ape on a building which I always believed to be the Empire State Building, I don't know whether in fact it -- I believe I'm reasonably sure it was and I associate that large ape with -- on some occasions with holding a lady who I believe was Fay Wray and on other occasions with swatting airplanes that were trying to get him.

Q And this, I take it, your testimony is to be -- so we have a time frame, this is your not having lived in a cave recollection at the time when you were first considering Universal making a King Kong movie?

A I would say from the time of my childhood continuously up to the present that if you showed me.

Large ape on top of a building, the instinct that I would have was I'm looking at King Kong. That's basically the image I have of King Kong.

Q And did that--to make it clear, was your

1
2 MR. KIRBY: January 1, '77 to June 4,
3 1980.

4 A Did anyone have the responsibility?

5 Q Yes.

6 A I would say that the merchandising of
7 King Kong would have been the responsibility of Mr.
8 Adler.

9 Q Is that answer based on your general
10 knowledge of Mr. Adler's duties as an MCA employee?

11 A Correct.

12 Q So do you have any specific knowledge
13 whether he was assigned to the task of marketing or
14 merchandising King Kong during that particular period?

15 A Well, Mr. Adler has as his general
16 responsibilities the licensing of properties owned
17 by Universal.

18 Let me make one point to be sure that I am
19 not omitting something of interest to you.

20 Universal has been in the process of
21 developing by way of example a major multimillion-
22 dollar tour attraction based on King Kong which may
23 be or may not be the subject of intercorporate
24 licenses. I do have an independent knowledge of that
25 fact because I have been personally involved in that.

1
2 Q Is that in the process of being developed
3 now?

4 A Yes.

5 Q So I take it that is not, for example,
6 open to the public now?

7 A No, it's not yet open to the public. In
8 point of fact, it's not yet constructed but Universal,
9 pursuant to what it believed to be its exclusive
10 rights, has been, over the past few years, evaluating,
11 creating and developing a multimillion-dollar studio
12 attraction which we believe will be the biggest
13 attraction in our history for the Universal Studios'
14 tour. Also, again, whether the subject of a license
15 in being or not, Universal has been developing a
16 Florida attraction which, for the purpose of my
17 deposition I will refer to as Universal Studios Florida,
18 and--that Florida attraction has as one of its major
19 elements a major King Kong activity. I just want to
20 be sure that in testifying that--I have no great
21 independent knowledge of licensing or activities
22 relative to King Kong--I don't mislead you in regard
23 to this one area. And I do have some knowledge of that
24 one area.

25 Q Well, I appreciate the enlightenment. My

1
2 Q Now you referred to some activity with
3 respect to a King Kong video game.

4 A Right.

5 Q What were you referring to?

6 A It's my understanding there is a King Kong
7 video game that has been licensed by Universal or
8 by MCA. Now I use MCA and Universal interchangeably
9 without conceding they are interchangeable, I'll use
10 it for purposes of reference.

11 Q Do you know who produces that game?

12 A I think there is a company called Tiger
13 that produces that game but I have no knowledge as
14 to what or who Tiger is.

15 Q Does MCA have its own video game
16 division?

17 A MCA has formed a video game division. The
18 Video Game Division, at this moment, is aggressively
19 pursuing opportunities in the video game business
20 however I don't know that it has yet made any video
21 games.

22 Q When was that division -- is it a
23 division, is that accurate?

24 A I don't want to characterize it as a
25 division or subsidiary because I'm not sure what it is.

1
2 Q A segment of MCA?

3 A A segment of MCA which I believe to be a
4 division either directly of MCA or of a subsidiary
5 of MCA and that was formed within the last year.

6 Q Do you recall when?

7 A I do not.

8 Q And you don't know whether or not they
9 actively -- strike "actively" -- whether or not they
10 have produced any video games?

11 A I don't believe they have produced any
12 video games although I know at this very moment they
13 are aggressively pursuing relationships that would make
14 them either a producer or a joint venturer in the
15 manufacture, creation, development and manufacture of
16 video games.

17 Q Did any of those video games involve King
18 Kong?

19 A I don't know whether or not there has
20 been any discussion involving King Kong video games
21 with MCA video games as a principal. I simply don't
22 know.

23 Q I don't understand your answer, what do
24 you mean by MCA video games as a principal?

25 A There is a difference between being what

1
2 I'll characterize as a lincenser or being a joint
3 venturer or a principal in the creation, development
4 and manufacturer of video games.

5 Now if I understand our own company
6 activity properly, MCA merchandising is the entity
7 that licenses games. Licenses, I will underline that
8 word. Now, MCA Video Games, in my opinion, would
9 generally not be a licensing agent but would be a
10 principal. In other words, it would have to take a
11 license just like Nintendo would have to take a
12 license with MCA merchandising. Having such a license
13 it could either, for its own account or at a joint
14 venture with someone, create, develop and manufacture
15 video games.

16 Q Now my question was, is MCA Video Games
17 pursuing a Donkey Kong -- excuse me, a King Kong
18 video game and you said no, not as a principale. Now,
19 as you have explained your answer, are they pursuing
20 it it any way?

21 A I didn't even answer no.

22 Q I understand.

23 A What I answered was, I was not aware
24 whether or not MCA Video Games was presently in
25 discussions or contemplating as a principal the

1
2 creation, development or manufacture of video games
3 based upon the King Kong property. I don't know the
4 answer to that question. I would say this, that
5 whether they are now, they will be.

6 Q Now, my question again, you don't know as
7 a principle whether they are doing any of those
8 activities, do you know whether in any other capacity
9 they are pursuing any of those activities at the
10 present time?

11 A I have previously testified that the
12 licensing activity, to wit, MCA merchandising, to the
13 best of my knowledge, has licensed a video game called
14 King Kong to a company called Tiger. I do not believe
15 that the MCA Video Games Division, which I have
16 characterized as the division that would act as a
17 principal as distinguished from a merchandising or
18 licensing agent for video games, I do not know
19 whether or not they are a participant or are presently
20 negotiating any rights for a King Kong video game.

21 Now there is a whole separate area of
22 activity which I'm sure would be the subject of
23 conversation involving Coleco and Donkey Kong and
24 I've tried not to clutter up any of my forgoing
25 answers with reference to that.

1
2 A Well, a video game to me is a broad term
3 and I think it cannot only include the kind of arcade-
4 type or coin operated-type video game, it can obviously
5 include all kinds of configurations of video games in
6 the home consumer noncoin-op mode.

7 Whether or not it includes the kind of
8 hand-held small configurations that Nintendo markets,
9 for example, is something that is a question of
10 semantics, I don't know whether or not we should
11 characterize that as a video game or some other kind
12 of electronic-type game.

13 There is now discussion going on about
14 gigantic-type multiperson game that would involve
15 video technology which I would characterize as the
16 future -- a future development of video games. It's
17 a broad spectrum.

18 Q I take it your answer to my previous
19 questions about your discussions with Mr. Fiedler and
20 Mr. Newman, you were using and understood the term as
21 a broad term, being all inclusive?

22 A I don't want to testify in specificity
23 about something I can't even testify to beyond the
24 broadest way in generality. So I don't have anything
25 to add that I think would be helpful.

1
2 Q Well, we will have to be specific then.

3 Have you had any discussions with Mr.
4 Fiedler about producing a hand-held video game or
5 electronic game, the type that is apparently familiar
6 to you that Nintendo markets with respect to a King
7 Kong theme?

8 A I guess I failed in my answer. I don't
9 recollect any specifics, so we can go through the list
10 if you want to, all of these and my answers with all
11 of these will have to be no, I simply don't remember
12 the specifics of any such conversations. The sum
13 total of my answer is, I believe, in reviewing
14 Universal properties for broad development into, quote,
15 video games, close quote, that King Kong has been one
16 of those that has been focused on for potential
17 development. I don't believe that I have had any
18 specific conversations with Mr. Fiedler about the
19 development of specific configurations of what might
20 be considered video games for King Kong or for any
21 other kind of property.

22 Q Has Mr. Fiedler ever sent you a memorandum
23 describing what activities the MCA Video Games Division
24 is engaged in?

25 A No.

1
2 Q Have you ever sent him a memorandum making
3 any suggestion?

4 A No.

5 Q Have you ever communicated with him in
6 writing at all to make suggestion about what MCA
7 Video Games should be doing?

8 A I never communicate with any executives
9 in writing.

10 Q When you say you never communicate in
11 writing, do I take it that you include writing notes
12 on the document and transmitting the document to an
13 executive of MCA?

14 A Well, obviously if I sent a buck sheet
15 to somebody and I said to Jim Fiedler, please handle,
16 I'm not including that in my general statement that
17 I don't communicate in writing. What I meant to say
18 was I don't write memos saying enclosed herewith is
19 a lengthy description of what you're supposed to be
20 doing. I communicate orally.

21 Q Do the MCA executives, specifically now
22 Mr. Fiedler, communicate with you by memorandum?

23 A Upon occasion they do.

24 Q Has Mr. Fiedler ever sent you a memorandum
25 describing what games MCA Video Games is looking into?

1
2 A No, not that I remember.

3 Q Has Mr. Newman ever sent you such a
4 memorandum?

5 A No, and it would be inappropriate at this
6 point in the game, I think, for them to really -- I
7 shouldn't say "inappropriate" -- I would not have
8 expected them to do so at this stage of the game.

9 Q Are they in the process of developing
10 any video game at the moment?

11 A They are in the process of having
12 discussions with people that contemplate relationships
13 where we would jointly develop such video games. As
14 a matter of fact, we had such discussions with your
15 client, not to any avail I hasten to add, but nonethe-
16 less. In other words, we have not gone out and
17 spent a lot of money to develop this business on our
18 own because we are of the opinion and we have publicly
19 so stated that we are predisposed to participate in
20 this business as a joint venturer rather -- our
21 perception is there are plenty of people out there
22 who are creating and manufacturing beer barrels so
23 we don't know that we want to go out and buy a beer
24 barrel factory, if I make my analogy clear. We are
25 perfectly content to participate with other manufacturers

1
2 A I do not.

3 Q Who at Universal or MCA is responsible
4 for the development of the studio tour relating to
5 King Kong that you referred to?

6 A Jay Stein is the president of the MCA
7 Recreational Services Division and he has a staff at
8 work with him in the creation, development of
9 attractions for the Universal Studios' tour and for
10 Universal Studios Florida.

11 Q So I take it he's also in charge of the
12 Florida project?

13 A Yes.

14 Q Has he described to you orally or in
15 writing what his plans are for this Universal tour
16 relating to King Kong?

17 A Well, I happen to know at this moment
18 what we are presently contemplating because I have
19 been a principal in those discussions.

20 Q All right, what are you presently
21 contemplating?

22 A We are contemplating a major multimillion-
23 dollar attraction that involves a large ape which
24 we consider to be King Kong, and this attraction will
25 involve him intimidating, for the purpose of amusement,

1
2 those visitors that take the Universal Studios' tour.

3 Now if you really want to know where does
4 he shake the tram and where do the electrical wires
5 come out, I guess I can go into all that but I don't
6 think it's going to make or break the case, counsel.

7 Q Well, thank you for your opinion on that.

8 Now, would you please describe the
9 configurations of this tour? I'm not interested in
10 where the wires go, I want to know ^{what I} the configuration
11 of this tour, in which you are a principal in the
12 discussions consist of.

13 A The Universal Studios' tour is the second
14 largest tourist theme park attraction in the United
15 States second only to the two Disney parks. It's
16 located at Universal Studios in Los Angeles.

17 Approximately 3,000,000 people attend each
18 year. During their attendance they are not only
19 given a tour in the sense of getting on a tram and
20 being driven around the so-called back lot of
21 Universal, but they also are exposed to various
22 shows that hopefully entertain them and amuse them,
23 which are built upon major properties.

24 By way of example, there is a so-called
25 Galactica attraction where the tram goes into a large

1
2 building and there is a laser war fought between good
3 guys of the sort that came from the Galactica
4 television series and bad guys of the sort that came
5 from the Galactica television series and that
6 attraction lasts a certain number of minutes and
7 the tour moves on.

8 In a similar fashion it's our intention
9 to create an attraction where a tour will drive into
10 a very large building, be confronted for a certain
11 number of minutes with a little show that involves
12 King Kong and it will hopefully amuse and entertain
13 them and they will move on. And there are a number
14 of these kinds of shows. Some of which involve
15 audience participation, some of which don't.

16 Q Let's focus on the show involving King
17 Kong, what would that consist of?

18 A In generality, what it will consist of is,
19 as I stated, a tram is going to drive into a large
20 kind of building. The building will depict a New
21 York -- at the moment at least we contemplate it
22 will depict a kind of New York environment. They will
23 be confronted with what I'll characterize as two kinds
24 of exposure of King Kong, and King Kong will be doing
25 things that are designed to amuse and entertain them.

1
2 By way of example he might appear to be shaking the
3 tram, he might appear to be hissing and foaming at
4 the mouth, he might appear to be coming towards them
5 in an intimidating fashion, he may or might not be
6 holding a girl a la the Fay Wray-type of imagery I
7 referred to earlier. That's what he will be doing.
8 And again without getting into the specifics as to
9 whether or not he is holding electrical wires or
10 whether or not he gets burned up at the end or appears
11 to get burned up at the end, these little attractions
12 kind of have little beginnings, middle and end, it's
13 in the nature of the tour, we don't want to scare
14 people to death or laugh to death, we want to maintain
15 as what I'll characterize as a lighthearted semi-
16 scary aire about it.

17 Q You said there were two aspects to the
18 King Kong. What is the other aspect?

19 A It's presently our intention there be
20 basically two phases of it, of the -- two actions, I
21 don't know how to characterize this, by the animated
22 King Kong figures. In other words, in its simplest
23 sense, at Point 1 King Kong will do something then,
24 by way of example, the tour guide might say, "My good-
25 ness, let's see whether or not we can escape," and the

1
2 tram drives 35 feet, appears to be over an elevated
3 or something and just about the time the tram and our
4 visitors think they are going to escape and King Kong~
5 does something else to them and after that something
6 else is concluded, the tram escapes.

7 So that's what I mean when I say two
8 aspects to it.

9 Q So there would be two events taking places
10 within this building involving King Kong and in
11 vaguely an intimidating way with the tram?

12 A I think that's a fair way to put it.

13 Q When did development of this feature of
14 the tour commence?

15 A Years ago, I would have to research that
16 to say. It's been in work for years. We haven't
17 made the judgment to do it up until more recently
18 because it's so expensive.

19 Q When was the judgment made to do it?

20 A I would say the firm judgment was made to
21 do it probably within the last six months but we
22 have always contemplated doing it. It's just that
23 we knew it would be more expensive than anything else
24 we have undertaken and quite frankly we deferred the
25 expenditure.

1
2 Q Is there a memorandum associated with the
3 firm decision to go ahead?

4 A I don't know if there is or there isn't.
5 I have approved it and everybody knows we are going
6 ahead. We know what it's going to cost.

7 Q So the costs were discussed with you?

8 A Oh, yes.

9 Q And the concepts obviously were discussed?

10 A Correct.

11 Q And you don't know whether that was
12 done in the form of a memorandum or simply oral
13 presentation?

14 A I'm sure there are memoranda going back
15 and forth within people in the division. There is no
16 memorandum that gets to me. By the time this matter
17 got to me it was as simple as saying, "Mr. Sheinberg,
18 we can do something like this for four and a half
19 million dollars, we can do something else for seven
20 or eight million dollars," there is a discussion about
21 what the something else is, I ultimately concluded
22 that the something else was much better but we are
23 not going to spend seven or eight million dollars
24 so we will go ahead and do the four or five million-
25 version and that's where it is.

1
2 Q At the time it came to you for the
3 Mr. Sheinberg conversation, did you have anything on
4 paper in front of you?

5 A I had drawings in front of me and story
6 boards. Whether or not somebody also had a budget
7 that was flashed in front of me, I don't know. I
8 frankly don't work that way. As long as somebody
9 gives me the bottom line I really am not interested
10 in what the teeth cost and the hair and the animation
11 and all of that.

12 Q But you did see drawings and the story
13 boards?

14 A I saw drawings, a story board, models.

15 Q Anything else?

16 A I think that's about it.

17 Q Now, was this decision to produce, if I
18 can use that word and you correct me if that word is
19 wrong, a segment for the Universal tours involving
20 King Kong the first project in which MCA Universal
21 determined to produce something involving King Kong
22 itself?

23 A No. MCA has always determined, and again I
24 think we have to distinguish between the determination
25 and the actual start. MCA had determined considerably --

1
2 a considerable time ago that it was going to make
3 another King Kong movie and we have in active work
4 right now one King Kong movie and we may in fact
5 make another King Kong movie. But one of them we
6 are absolutely going to make in the absence of an act
7 of God or an unanticipated event and that is also
8 in work.

9 Q Now, let me go back to my question, then
10 we will pursue your answer.

11 My question was, was this production as
12 part of the tour the first decision to go ahead and
13 produce something involving King Kong that MCA made?

14 A I think I answered that question but I'll
15 answer it again because maybe I wasn't clear.

16 MCA made a decision to produce another
17 King Kong movie. We haven't in fact made that movie.
18 Now, I supplemented that by saying that in point
19 of fact that decision has been implemented to the point
20 where there is a very expensive script being written
21 for such a movie which in the absence of some kind of
22 unforeseen event will be produced and released.

23 Q Let me switch to the word "implementation."
24 Other than the implementation of commissioning or
25 directing that what you describe is an expensive script

1 prepared for a King Kong movie, is the production
2 related to the Universal City Studio tour the first
3 implementation by MCA of any production involving
4 King Kong?
5

6 A We are, for the purpose of this conversation,
7 obviously excluding all of the implementation that
8 related to the earlier movie.

9 Q I'm asking about MCA Universal and what
10 they have done.

11 A I understand what you are asking, I want
12 you to understand what I'm answering. You are aware
13 because you obviously have prepared for this inquiry
14 that MCA spent hundreds of thousands of dollars and
15 maybe in excess of a million dollars at an earlier
16 point. Now what I'm saying is when you say is it
17 MCA's first implementation, you are, I assume, exclud-
18 ing that.

19 Q Yes, let's exclude that.

20 A Now, if you excluded that I don't have any
21 present recollection of what we have done as a
22 principal and we have kind of exhausted the merchandis-
23 ing inquiry, I hope, a few moments ago. I don't have
24 any recollection of what else we have done as a
25 principal prior to the tour and the movie that we

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first place where this King Kong attraction will appear.

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Q What is the status of the Florida project?

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A The status of the Florida project is that it's in development, it has completed a preliminary design stage, we have some preliminary cost estimates and that's where it is. We have not made a firm decision as to when we are going to start, we own the land, that's where it stands.

10

11

Q I take it that this will be a production of a theme park type of operation?

12

A Correct.

13

14

Q Which the King Kong feature would be one aspect of the park?

15

A A major aspect.

16

17

Q And you do not, at the present time, know when that project will get underway?

18

A I do not.

19

20

Q When did you direct that a script be prepared for another King Kong movie?

21

22

23

24

25

A Well, we have been in discussions about a script for another King Kong movie really for what I would say a few years. We have never taken that to the point of actually engaging a writer although Dino DeLaurentiis, it is my understanding, did engage

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2 a writer and did do some work on it. I don't believe
3 that he is the possessor of any rights, and I hope
4 we don't go into that because you could read the
5 documents and know where that stands but more
6 recently we determined that the cost would be
7 prohibitive to make what I'll call a straight King Kong
8 movie, we are now in the process of doing what I'll
9 describe as a comedic treatment of a King Kong movie.
10 And that is the script that is presently in work and
11 that we presently intend to make.

12 Q When did you direct the beginning of that
13 script?

14 A That script was in fact put in work within
15 the last few months. There have been other false
16 starts that I would say would go back six months to
17 a year but the one that we presently plan to do only
18 goes back a few months.

19 Q Did that involve hiring a writer?

20 A It involves assigning it to a producer
21 and it involves hiring a writer.

22 Q Has a writer been hired?

23 A The writer has been hired and is at work.

24 Q Who is the writer?

25 A Stanford Sherman is the man's name.

1

2 Q Did you give the name of the producer?

3 A Jennings Lang.

4 Q In connection with what you've described
5 as false starts, was a writer assigned to produce a
6 script?

7 A A writer was not assigned although I
8 happen to have had meetings with at least two groups,
9 two separate groups with a view toward doing this and
10 for one reason or another it never got done.

11 Q Who were the two groups?

12 A One fellow I had a discussion with, his
13 name is Bernie Schwartz, Bernard Schwartz, and I had a
14 discussion about him commissioning this kind of a
15 script.

16 A totally unrelated discussion I had with
17 two writer-producers whose name I have forgotten
18 unfortunately but they are the creators behind the
19 television show "Taxi," and they will come to me in a
20 moment.

21 Q When did you have your discussion with
22 Mr. Schwartz's group?

23 A The conversation with Mr. Schwartz was not
24 with a group, it was with Mr. Schwartz and I would say
25 I had that conversation with him probably within the

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2 last four or five months. And I would say that the
3 conversation with the two writers -- the writer-
4 producers from "Taxi," probably I would say that goes
5 back six months.

6 Q Did either of them submit to you a written
7 proposal?

8 A Neither have submitted a written proposal
9 and the reason I finally assigned this to Mr. Lang is
10 I knew when I gave it to Mr. Lang it would get done.

11 Q And do I take it that your answer means
12 you did not have confidence it would get done if
13 you gave it to either of the other two?

14 A Well, I didn't necessarily lack confidence
15 but I wanted this to get done within my lifetime and
16 in the motion picture business properties can take
17 extensive periods of time to develop measured by
18 years, sometimes decades.

19 Q Did you have any discussions with Mr.
20 DeLaurentiis about this?

21 A Yes, Mr. DeLaurentiis is the third person
22 and group that I had discussions about a King Kong
23 film and these discussions have taken place on a
24 re-occurring basis over the last six years. And in
25 fact Universal may make another King Kong, it's possible.

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2 with Mr. DeLaurentiis which would be oriented toward
3 the more action version as distinguished from the
4 other version which is comedic in treatment. A comedic
5 version is more of a King Kong Junior or Son of King
6 Kong type of comedic treatment so that the two are not
7 mutually exclusive.

8 Q Did Mr. DeLaurentiis ever present you with
9 a written proposal?

10 A I don't believe we ever had a written
11 proposal but we had discussions about what the budget
12 would be. And I was -- I did not go forward with
13 Mr. DeLaurentiis because of a concern that the cost
14 would be excessive.

15 Q When was your last discussion with Mr.
16 DeLaurentiis?

17 A I would say within the last two or three
18 months.

19 Q Have you reviewed this very expensive
20 script that is being prepared by Mr. Sherman?

21 A I haven't reviewed it because I haven't
22 seen it. But I have a generalized idea of what it is
23 and I believe -- that's all. I shouldn't say any
24 more, I don't know any more.

25 Q What is your generalized idea of what it

1

2 would be?

3

4 A It's a comedy, first of all, as distinguish-
5 ed from a drama and it's in the nature of a chase
6 comedy and it does not necessarily utilize a gigantic
7 King Kong. There will be reasons why this King Kong
8 can be smaller and therefore cheaper to manufacture.

8

9 Q I take it you are talking about an
10 animated King Kong?

10

11 A No, I'm not, I'm talking about a King Kong
12 that would be not that much bigger than life-size
13 so presumably he can be implemented by a man in a
14 suit or something short of a 30-foot creature.

14

15 Q Where is this --

15

16 A There will be story reasons why that's
17 the case.

17

18 Q Where is this comedy going to be set?

18

19 A I'm not sure. It's my understanding
20 that it will probably include locations in New York
21 but I'm not sure where it's going to be set.

21

22 Q What would the story line of the comedy
23 be?

23

24 A I can only tell you that I've told you
25 and that is it is going to be a chase in nature,
there will be people running and people chasing them.

1
2 The people running will include King Kong or his son or
3 a King Kong Junior or some derrivative thereof. And he
4 will appear in comedic situations or at least what
5 people hope will be comedic situations.

6 Q When you said King Kong or King Kong Junior,
7 some derrivative thereof, what were you referring to
8 when you said some derrivative thereof?

9 A Well, I don't know whether or not this
10 particular King Kong character will be depicted as a
11 long lost son of King Kong or something else.

12 Q Did you have any discussions --

13 A By way of analogy, I don't have any great
14 knowledge of the King Kong Junior -- rather -- I keep
15 saying King Kong and I mean Donkey Kong, I'm sure you
16 can understand the confusion, you've made it a couple
17 times yourself, but if you take a look at the Donkey
18 Kong video games, there is now something on the market
19 called Donkey Kong Junior, as I understand it, and I
20 don't know whether or not that fellow is in fact a
21 son of or some other relationship to that 'her Donkey
22 Kong, you see, but yet we would I think both agree
23 that it's a derrivative of that first Donkey Kong
24 while in a similar fashion, I don't know whether my
25 particular Kong will be a son or something else and I'm

1

2 not sure it matters a whole lot.

3

Q Have you ever seen Donkey Kong Junior?

4

A No, I haven't seen him other than -- no,
5 I don't think I've ever seen him. I've seen pictures.

6

Q You've never seen the video arcade game?

7

A I don't believe I have.

8

MR. FAIRHURST: The witness--let me
9 clarify that you mean video arcade game of
10 Donkey Kong Jurnior; is that correct?

11

MR. KIRBY: I think he understood that to

12

be the context.

13

A Yes.

14

Q Now, at the time when you gave the project
15 to Mr. Lang and Mr. Sherman, did they give you a
16 written out line of their proposed treatment of the
17 theme?

18

A No.

19

Q Did they have a discussion with you --

20

A Mr. Lang had a discussion with me prior
21 to his discussions and subsequent to the discussions
22 with Mr. Sherman.

23

Q Have you ever personally had any discussions
24 with Mr. Sherman?

25

A To the best of my knowledge, I've never met

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1
2 Mr. Sherman.

3 Q Did you have discussions with respect to
4 this project with anyone else involved with Mr. Lang?

5 A Anyone else involved with Mr. Lang?

6 Q Yes.

7 A There is no one else involved with Mr. Lang,
8 to the best of my knowledge.

9 Q Well, is he an employee of MCA Universal?

10 A Well, strictly speaking, at this moment,
11 he is an independent contractor of MCA Universal
12 and as most people in the business has his own
13 production company and is basically a partner of
14 Universal.

15 Q Has Mr. Lang given you any reports as to
16 the progress of the project?

17 A Yes, he has advised me that the project
18 is being written.

19 Q Has he told you where the script stands
20 now?

21 A No.

22 Q Do you know whether or not the script is
23 almost complete?

24 A I can't testify that I know it's almost
25 complete. I would suspect it's almost complete.

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2 Q What is the basis for your suspicion?

3 A Well, it has been in work for, seems to
4 me, such a period of time that it would not be un-
5 reasonable for me to expect that it is almost complete.

6 Q Does Mr. Lang have a deadline for giving
7 you the script?

8 A Only working backwards that we intend this
9 movie to be leasible by next Christmas and if that is
10 the case it is going to have to be available for
11 production I would think sometime no later than next
12 spring or summer and working backwards for the time it
13 takes for preproduction and all of that we would
14 have to have a final script sometime next spring so
15 the thought that a first draft script would be coming
16 forth sometime within the next six weeks or so I would
17 say is something that I would anticipate.

18 Q Does this project have a working title?

19 A It has a working title, it appears on
20 the status report of ours which frankly I have not
21 heard but it so appears in writing.

22 Q And what is that?

23 A Kid Kong.

24 Q Have any story boards been produced?

25 A I don't know.

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Q You have not seen any story boards?

A No. It isn't necessarily so that there will be story boards.

Q Have you seen any pictorial depictions of this Kid Kong project?

A I don't think there are any -- I shouldn't say I don't think there are -- but it's true I don't think there are.

Q Well, obviously you are answering my question, I take it, you haven't seen any?

A No, I haven't seen any.

Q Mr. Sheinberg, since you are obviously an expert in production of movies and I'm not, perhaps you could enlighten me generally as to what you would expect to see at the time, perhaps six weeks from now when you get the first draft of the script?

A I would expect to see a first draft script. I would expect to see paper with typing on it that indicated dialogue and indicated action. It would generally be makable into a theatrical motion picture.

Q Would you anticipate having receiving at the same time any production ideas?

A Well, there are obviously production ideas that are integral to a script but I won't expect to get

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2 a story board at that time, I won't expect to get a
3 shooting schedule initially. Those are typically
4 subsequent stages in the preproduction process. A
5 script is like getting plans from an architect to build
6 a building except in a dramatic form.

7 Q Do you have a contract with Mr. Lang?

8 A Yes, we do.

9 Q And that contract is with Universal
10 City Studios?

11 A Yes, it is.

12 Q When you entered into the agreement with
13 Mr. Lang during the period prior to entering into an
14 agreement when you were having discussions, did you
15 or anyone on your behalf furnish Mr. Lang with anything
16 from the MCA Universal files such as the previous
17 script, using that as an example?

18 A Mr. Lang was not furnished by me with a
19 previous script and I did not furnish Mr. Lang anything
20 other than I counseled Mr. Lang that this property
21 was the subject of considerable litigation and that he
22 should advise and consult with one of our in-house
23 lawyers who was very much a participant in this to be
24 sure that we did not inadvertently infringe on any
25 rights owned by RKO or otherwise -- or indeed Dino

1
2 DeLaurentiis. It was of my opinion that both of
3 those parties indeed have protectible rights in the
4 King Kong property and I alerted him that I did not
5 want to find us in the position of being infringers
6 of those rights.

7 Q Did you describe to him what the protectible
8 rights of either RKO or DeLaurentiis were in King Kong
9 properties?

10 A I think I did in a generalized way but
11 again I don't want to be practicing law on the topic
12 of King Kong because there are others that can do that
13 better than I can.

14 Q What did you tell him in a generalized way?

15 A I told him but I want to be very sure
16 that anything that was protectible in the particular
17 screen play or the photoplay of King Kong, in either
18 one of those two films should not, through inadvertence
19 or worse, be used.

20 Q Did you specify anything that was protectible
21 to him?

22 A I don't think I did.

23 Q Do you have an opinion as to what specific
24 things are protectible by RKO and DeLaurentiis?

25 MR. FAIRHURST: Is this a legal question?

1
2 MR. KIRBY: I'm asking him his general
3 opinion.

4 MR. FAIRHURST: In what capacity?

5 MR. KIRBY: In his capacity as president
6 of MCA.

7 A In my capacity as president I have no
8 opinion, in my capacity as a kibitzing former lawyer
9 I have certain opinions.

10 Q What are they?

11 MR. FAIRHURST: He doesn't have to divulge
12 them to you, those are his attorney-client
13 privileges himself. It is totally irrelevant
14 as well you are asking for his legal views
15 that's irrelevant as well.

16 MR. KIRBY: Read the question back and
17 read his answer.

18 (Portion of record read by the reporter.)

19 Q Now I'm asking what those opinions are.

20 MR. FAIRHURST: I'm telling you there is
21 an attorney-client privilege attached to that
22 which you can't inquire into because he is the
23 client and he is the attorney and it is also
24 sterlingly irrelevant what his legal views are,
25 the legal views will be set forth in briefs and

1
2 you and I can argue about that but you are here to
3 ask a witness what he knows what the facts are
4 and what he's seen happened not his legal views.

5 My objection stands on that basis.

6 Q Will you answer the question, please?

7 A I'm not going to answer any question as to
8 what my legal opinion is in this case unless a court
9 orders me to do so and that is a rather high level
10 of court because I don't think that my legal opinion
11 as to what our rights are is what we are here inquiring
12 on.

13 Q Let's make sure we understand the question
14 which I take it you are refusing to answer. I am
15 asking you what your views are as to what rights
16 either DeLaurentiis or RKO has that are protectible.

17 A Correct. That's another way of asking
18 me for what my legal opinion is on those rights. Now
19 I told you that I have no opinion, other than as a --
20 I characterized it as a kibitzing lawyer on that
21 subject and I don't believe that my legal opinion is
22 either relevant or, as my learned counsel suggests,
23 it may in fact be protectible to me.

24 MR. FAIRHURST: The other thing, John, is
25 you are asking him a question I think it is

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2 described in his testimony before, and I don't
3 mean to intercede or intrude in your deposition
4 but the rights to which you are questioning him
5 at this point are set forth in the documents
6 which we have identified as the source of the
7 rights and anyone can read them and make whatever
8 arguments one pleases to make on the basis of
9 that reading and that's what you're really
10 discussing at this point. I mean you are asking
11 a witness who has essentially described himself
12 as a lay witness, although he happens to be a
13 lawyer, to give his legal views on those
14 documents and as I say I think that the inquiry
15 exceeds the bounds of what a witness should
16 testify to. We stick by our objection.

17 MR. KRIBY: I fully understand your
18 objection, I understand your statement. I dis-
19 agree with it and I am asking Mr. Sheinberg
20 what I regard as a fact question.

21 MR. FAIRHURST: What fact would you wish
22 him to testify to?

23 MR. KIRBY: Please let me continue.

24 MR. FAIRHURST: I'm sorry.

25 Q What rights are you advising your contracted

1
2 producer to avoid in producing something for Universal
3 with respect to King Kong?

4 A All right, I want to be very precise, see,
5 that if you fellows have to argue about it you know
6 what you are arguing about. The fact that I am
7 advising my producer is as follows:

8 RKO and Dino DeLaurentiis may have legally
9 protectible rights as a result of their photoplays.
10 Consult, My producer, with our attorney so that you
11 are counseled and advised as to what, if any, those
12 legally protectible rights are so that you will not
13 intentionally or inadvertently violate those rights.

14 That's my directive.

15 Now the subject as to what my opinion is
16 about what my lawyer may tell him, which I have
17 characterized as a quasi legal opinion is not one to
18 which I am going to testify.

19 Q I'm asking you now very specifically, do
20 you have knowledge of any rights which RKO has in
21 the King Kong properties, broadly speaking?

22 A Do I have knowledge?

23 Q Yes.

24 A No.

25 Q Do you know of any rights RKO has?

1
2 A No.

3 Q Is it your position RKO does have rights?

4 A It is my position RKO may have rights
5 and that's precisely the legal question that I'm not
6 going to answer.

7 Q So it is your position you don't know
8 whether RKO has rights, they may have rights but you
9 don't know?.

10 A I think that's fair.

11 Q Is that your position with respect to
12 Mr. DeLaurentiis?

13 A Yes.

14 Q Now, when you spoke to Mr. Stein about
15 creating the studio tour property, did you advise
16 Mr. Stein to avoid anything in construction of that
17 tour exhibit which avoided any rights which RKO or
18 DeLaurentiis had?

19 A I either advised him that in that way or
20 else I advised him to consult thoroughly with our
21 attorneys and I believe I probably advised them both
22 ways so that we would not be in the position of
23 violating any third-party rights and I think if I
24 didn't do this with both Mr. Lang and Mr. Stein I'd
25 be derelict in my duties, having survived six years of

1
2 litigation on King Kong I would be a fool -- I don't
3 mean to be impudent but this would be analogoys
4 to somebody going off and making a video game on
5 some character and not advising whether there might
6 be some rights of third-parties. Anybody who conducts
7 a business and is in traffic and in the
8 creative area and who knows about King Kong would
9 do that. That's all I've done.

10 Q I'll forgive you your impudence. Now, as
11 for Mr. Stein, did you tell him any specific thing
12 to avoid in constructing the studio tour exhibit.

13 A I don't remember having so done.

14 Q Did you tell him that the ape should look
15 in a certain way rather than another way?

16 A No. I simply -- I want to tell you what
17 I told him because I'm very comfortable with it.

18 I told him to get legal advice. That's what
19 I told him to get so that we didn't depict the ape
20 or anything else that might be protectible.

21 Q As far as anything else, did you advise
22 him as to the anything else which might be protectible
23 in connection with the production?

24 A To the best of my knowledge, I neither
25 advised Mr. Stein nor Mr. Lang beyond the giving him

1
2 of a specific name as to who they should consult.

3 Q Who did you tell them to consult?

4 A Joe DiMuro.

5 Q And the rights, to make sure that we have
6 this, that you were asking him to ascertain that they
7 not infringe in any way would be the rights held by
8 RKO and the rights held by DeLaurentiis?

9 A Yes. I have previously testified that I
10 didn't know whether I said be sure and talk to Joe
11 DiMuro about the rights held by RKO and DeLaurentiis
12 or whether I said call Joe DiMuro and be sure that
13 whatever you're doing doesn't create a problem for us
14 with regard to the rights and the property King Kong.
15 I don't know whether I stated it in a cautionary way
16 or affirmative way, I felt that I discharged my
17 duties, and I was very comfortable by saying get Joe
18 DiMuro in the act.

19 Q Other than in RKO or DeLaurentiis, did
20 you discuss the fact that anyone else may have some
21 rights to the King Kong properties?

22 A I didn't but I can think of other people
23 that might have rights if we would have to be concerned
24 about.

25 Q Who?

1
2 A Well, there are some other King Kong films
3 that have been made that I alluded to the fact that
4 we were distributors of, I don't know that we own the
5 copyrights or there aren't protectible trademarks
6 and trade names and related property rights, somebody
7 told me once I think that there was a King Kong
8 television series. Now you know it may well be
9 that there were aspects in that that are protectible.
10 I know enough to know that if there are derivative
11 works that involve a property that you may acquire
12 independently protectible rights on derivative works
13 and whether I know what those rights are or I am
14 qualified to give legal opinions which I say I am not
15 qualified to do so, I know enough to know to see a
16 lawyer.

17 Q Any other than RKO, DeLaurentiis, the
18 other King Kong movies in which Universal is the
19 distributor and what you think may be a King Kong
20 television series?

21 A I can't think of any right now but you
22 know it just occurs to me right now if somebody
23 handed me a script and I saw somebody throwing barrels
24 at people, by way of example, I would be alert to the
25 fact that Nintendo might have protectible rights.

1
2 didn't get any rights secretly that are not in that
3 paper with regard to King Kong. Now obviously that
4 paper recites that we have a right to make Kongs,
5 they get certain profit participations. I think there
6 is a legal expression that I remember from law school
7 called

8 That's what it is, I cannot make it
9 bigger, I cannot make it littlier, that's what it is.

10 Q I'm glad you remembered that from law
11 school, Mr. Sheinberg, now I'm not asking what the
12 settlement agreement contains, I'm asking about the
13 settlement discussions in the course of the settlement
14 discussions did you discuss with Mr. O'Neil Universal's
15 attaining any rights from RKO with respect to the
16 RKO properties? res ipse loquitur.

17 A Other than King Kong?

18 Q I'm sorry, the RKO properties in King Kong.

19 A I don't remember any discussion with RKO
20 other than on the subjects that are codified
21 as it were in this memo. I don't even understand
22 your question to be totally honest with you.

23 Q We will try to get at it in a number of
24 different ways and see if we can reach some level of
25 understanding here.

1
2 Did you ask for any rights with respect
3 to King Kong from RKO in the course of those settlement
4 discussions which you did not obtain as the result
5 of the settlement agreement and release which we
6 are now referring to?

7 A I don't understand. Can you be more --
8 what exactly are you talking about?

9 Q Well, Mr. Sheinberg, I assume when you
10 went into meetings with Mr. O'Neil you had an agenda
11 of things you hoped to obtain as a result of signing
12 an agreement with him; is that correct?

13 A The main focus of the settlement discussions
14 involved a collateral settlement which is not the
15 subject of these papers. I really didn't have any
16 protracted conversations on the subject of King Kong
17 because the court had ruled, as I recollected, that
18 RKO had certain limited rights in King Kong and the
19 Cooper estate, as I recollected, the Federal Court
20 ruled other rights in King Kong and my recollection
21 is flawed though it may be that we had acquired rights
22 from the Cooper estate and that there was actually
23 kind of a narrow subject of discussion that was really
24 focusing on what I'll call the damages issue and the
25 sequels issues. The damages issue was disposed of by

1
2 a collateral agreement which doesn't strike me as
3 conceivably relevant to anything but nonetheless
4 we entered into and by this agreement.

5 Now as far as this agreement goes, it
6 goes to the question of sequels and their participation
7 in sequels and a very short amount of time that I
8 can remember was spent on that and Steve Kroft and Jo
9 DiMuro with RKO's lawyer really focused on that.
10 The real substance --

11 Q When you say that you are referring to
12 this settlement agreement --

13 A The legal niceties that are composed of
14 this agreement that are contained in this agreement.
15 Most of what Mr. Sheinberg and Mr. O'Neil talked about
16 were the financial terms of a collateral agreement,
17 not this agreement. Now I would say that's where
18 most of the time was spent.

19 Q When was that collateral agreement
20 entered into?

21 A In connection with this agreement?

22 Q And the parties to that agreement were RKO
23 and Universal?

24 A Correct.

25 Q And that related to King Kong?

1
2 Q I take it from Mr. Hadl's testimony that
3 he has new responsibilities as of approximately January
4 '81 for supervising litigation for MCA.

5 A Well, I would say it is more than that
6 but, yes.

7 Q But it includes that?

8 A Yes.

9 Q What else does it include?

10 A Well, I would say we have kind of made him
11 the super head of the Law Department in many ways.
12 I'm not sure he'd like that characterization but that's
13 my characterization.

14 Q Now, at the time that Universal was
15 entering into discussions with Cooper, did anyone at
16 Universal fulfill Mr. Hadl's responsibilities or were
17 you directly dealing with counsel, outside counsel?

18 A The King Kong case was my case and I was
19 involved with it. I don't remember their being an
20 intermediary. It had been said with some jest in
21 Hollywood on my tombstone the two words that will go on
22 is King Kong and Sony. Maybe they will add a third.

23 Q I should remember your consideration,
24 what Thomas Jefferson has on his tombstone.

25 Under the settlement agreement with Cooper

Sheinberg

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2 at Mr. Hadl at that point who I believe was at this
3 lunch and I said, "Gee, I'm kind of sorry to hear
4 this because it sounds like we will have a problem
5 because we own these rights and that infringes on our
6 property" and Mr. Greenberg turned to me and said,
7 this is what I remember he said, quote, the famous
8 line from a movie, "What took you so long?"

9 Q To which you responded to this famous
10 movie line?

11 A To which I believe I responded in
12 substance that what took us so long is we didn't know
13 that was such a thing called Donkey Kong.

14 Q Did you ask Mr. Greenberg what his plans
15 were with respect to Donkey Kong?

16 A Well, it seems to me that he had mentioned
17 in the process of this discussion that Donkey Kong
18 was a cartridge that he had licensed from Nintendo and
19 they planned on making it and marketing it in their
20 Coleco system and their other configurations and he
21 also told me that he had a relationship with Nintendo
22 and there was even some question at one point as to
23 whether or not he might be constructive in seeing that
24 this thing was resolved amicably.

25 Q Was this all at this luncheon or at some

1
2 subsequent point?

3 A I don't remember if it was all at the
4 luncheon. It seems to me it was all at the luncheon.
5 Maybe Mr. Greenberg and I spoke twice, it came up at
6 the luncheon, and it seems to me there was a sub-
7 sequent conversation with Mr. Greenberg and it was a
8 very brief conversation where I think we had agreed
9 that we resolved our problems. The resolution between
10 MCA and Coleco of the Donkey Kong matter was not a big
11 deal, I believe they believed our position had merit,
12 they didn't think we were trying to gouge them
13 and it was disposed of. It didn't go over protracted
14 time frame.

15 Q At that luncheon, did you describe to Mr.
16 Greenberg what you believe Universal's rights to be?

17 A I did but I quite frankly didn't really
18 have to. Mr. Greenberg is a graduate of the Harvard
19 Law School, he's extremely intelligent and successful
20 businessman and I told him we had gone through this
21 entire painful process of litigating the rights and
22 acquiring rights in King Kong and that we felt we had
23 protected rights and as I say his basic attitude was
24 after he said what took you so long, his basic attitude
25 seemed to be, look, if we can work this thing out,

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2 well, I don't want to have a lawsuit on this, I hear
3 you. Then the issue was we wanted 15 per cent or 20
4 per cent royalties or were we going to be reasonable
5 and we settled it.

6 Q When was this luncheon?

7 A The second or the first?

8 Q The first luncheon.

9 A I don't remember.

10 Q I take it the luncheon was set up to
11 discuss something other than Donkey Kong?

12 A The luncheon was a good and welfare
13 luncheon that was set up between our two companies.

14 Q Would your diary reflect when that
15 luncheon took place?

16 A Absolutely.

17 MR. KIRBY: Would you furnish us the
18 date on which that luncheon took place?

19 A I am sure that luncheon was after the
20 initial correspondence with Nintendo.

21 Q And the second luncheon?

22 A I don't believe there was a second luncheon.

23 Q I'm sorry.

24 A I think I stated it was a luncheon but it
25 seems to me the second time this may have been brought

1
2 up was actually a breakfast where Mr. Greenberg happened
3 to be in town and Mr. Wasserman and Mr. Sheinberg were
4 with him and I think he brought it up saying I think
5 we have resolved this problem and I'm happy to see
6 it has been amply resolved and then we were onto
7 discussing other things.

8 Q At the first luncheon who was present
9 other than you, Mr. Hadl and --

10 A I believe Mr. Wasserman was present.

11 Q At the first luncheon?

12 A I think so.

13 Q When did you first alert Mr. Wasserman
14 of the existence of a game called Donkey Kong?

15 A I'm sure very early in the game, probably
16 on or about the same time I discussed it with Mr. Hadl.

17 Q Do you recall how you communicated it to
18 Mr. Wasserman?

19 A I'm sure orally.

20 Q And it is your best recollection that we
21 will confirm this that he, the luncheon -- all right,
22 strike that question. We will get the date.
23
24

25 (Continued on the following page.)